Petitioners

NW'S Fred Avon Road, 36' SW of the colot Antietam Road (2034 Tred Avon Road) 15th Floction District Sth Councilmanic District

Frank A. Morte, et ux

* BEFORE THE

* DEPUTY CONING COMMISSIONER * OF BALTIMORE COUNTY

* Case No. 94-259-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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This matter comes before the Peputy Loning Commissioner as a Potition for Variance filed by the owners of the subject property, Frank A. and Eva M. Morte. The Petition as filed seeks relief from Section 1800.3.3.1 of the Baltimore County Moning Regulations (B.C.Z.R.) to temporankly permit a front yard setback of 2.2 feet in lieu of the required 25 feet, and to temporarily permit a side yard setback of 1.4 feet in lieu of the required 10 feet for an existing second dwelling. More specifically, the Petitioners seek to temporarily establish a zoning use division line which would serve to subdivide the subject property into two lots to legallike and permit the continued use of the second dwelling by the Petitioners! daughter for a period of ten (10) years from the date of this Order. The relief sought and the Petitioners' property is more particularly described on the blat submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Frank Morfe, property owner, and his son. Charles Morfe. The Petitioner was represented by Newton A. Williams, Esquire. There were no Protestants.

Testimeny established that the subject property, known as 2034 I lead. Avon. scad, consists of 0.36 acres, more or less, zoned D.R. 5.5 and improved with a one-story trame dwelling with basement, a concrete pitto slab with darport, a one-story concrete shed with a one-story frameon-slab dwelling attached thereto, and two sheds, one wood and one block. This property is located within the Chesapeake Bay Critical Areas on Hopkins Creek in the Essex area of southeastern Baltimore County. Testimony revealed that the Petitioners have resided in the main dwelling on the property for many years and that they are now in their 80's. Inasmuch as the Petitioners are up in years, they wish to have one of their children reside on the property to assist them with their personal needs as well as to help them maintain their property. The Petitioners are desirous of having their daughter reside on the property in the smaller one-story dwelling which has existed on the property since approximately 1986. As noted above, the Petitioners filed the instant Petition to establish a temporary zoning use division line which would serve to subdivide the property into two lots and legalize the second dwelling on the property. In addition, the Petitioners seek the continued use of this dwelling by

Pursuant to the comments received from the Department of Environmental Protection and Resource Management (DEPRM) dated January 27, 1994 strict compliance with the B.C.Z.R. and specifically, Critical Areas legislation will not be required at this time since no development is proposed and the variance sought is for existing conditions on the property. However, at such time as the temporary zoning use division line is terminated, the property must be brought into compliance with these regulations and any other applicable environmental regulations in effect at that time. In addition, there shall be no further development on the site as this property is already completely built out with over 25% of impervious surface.

their daughter for a period of ten (10) years from the date of this Order.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and

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permitted purpose or render conformance unnecessarily burdensome;

2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented,

The facts and evidence presented tend to establish that special conditions or circumstances exist which are peculiar to the land or structures located within the Chesapeake Bay Critical Areas of Baltimore County; and that strict compliance with the Chesapeake Bay Critical Area requirements and the B.C.Z.R. would deprive the Petitioner of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Areas in Baltimore County. The granting of the relief requested will not confer upon the Petitioner any special privilege that would be

his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a

public safety and welfare secured.

it appears that the variance requested should be granted. It is to be noted that the relief sought is being requested to correct the zoning violation (second dwelling) which has existed on the property for many years without complaint. In addition, the smaller dwelling is occupied by a family member and is not rented. Furthermore, no one appeared in opposition to the relief requested which is temporary and not intended to be a permanent use.

denied by the critical area regulations to other lands or structures within the Chesapeake Bay Critical Areas. The relief requested is in harmony with the general spirit and intent of the Critical Areas legislation for Baltimore County and conforms to the requirements as set forth in Section 500.14 of the B.C.Z.R.

In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

> 1) Minimize adverse impacts on water quality that result from poliutants that are discharged from structures or conveyances or that have run off from surrounding lands:

2) Conserve fish, wildlife, and plant habitat; and

 Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this $\frac{33}{2}$ day of February, 1994 that the Petition for Variance seeking relief from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.2.R.) to temporarily permit a front yard setback of 2.2 feet in lieu of the required 25 feet, and to temporarily permit a side yard setback of 1.4 feet in lieu of the required 10 feet for an existing second dwelling unit, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

> 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

IT IS FURTHER ORDERED that the Petitioner shall comply fully and completely with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in their comments dated January 27, 1994, attached hereto and made a part hereof

TMK:bjs

Deputy Zoning Commissioner for Baltimore County

Baltimore County Government Zoning Commissioner Office of Planning and Zoning

February 23, 1994

Suite 113 Courthouse 400 Washington Avenue Towson, MD 21204

SEIVED FOR

(410) 887-4386

Newton A. Williams, Esquire 210 West Pennsylvania Avenue, Suite 700

Towson, Maryland 21204 RE: PETITION FOR VARIANCE NW/S Tred Avon Road, 36' SW of the c/l of Antietam Road (2034 Tred Avon Road) 15th Election District - 5th Councilmanic District

Frank A. Morfe, et ux - Petitioners

Dear Mr. Williams:

Case No. 94-259-A

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

> Very truly yours, unity 160 trow TIMOTHY M. KOTROCO Deputy Zoning Commissioner for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Frank A. Morfe 2034 Tred Avon Road, Baltimore, Md. 21221 Chesapeake Bay Critical Areas Commission 45 Calvert Street, 2nd Floor, Annapolis, Md. 21401 DEPRM; People's Counsel; File

ORDER RECEIVED FO

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Petition for Variance to the Zoning Commissioner of Baltimore County

for the property located at 2034 Tred Avon Road which is presently zoned D.R.5.5 94-259-A

This Petition shall be filed with the Office of Zoning Administration & Development Management The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1802.3.C.1 to temporarily permit a 2.2 foot front yard setback in lieu of the required 25 feet, and Section 1802.3.C.1 to temporarily permit a 1.4 foot side yard setback in lieu of the required 10 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following resears: (Indicate hardship or 1. The subject property is in perfect condition and has a small shore front home, as well as a never home.

2. That the smaller home is occupied by a family member, and is not rented. 3. That the smaller house is unobtrusive, and fits in well with the neighborhood, and gives the appearance of an accessory building.

4. That it would pose great practical difficulty and unreasonable hardship if it were not allowed to continue, and it poses not the health, safety and (over)

Property is to be posted and advertised as prescribed by Zoring Hegulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

(Type or Print Name)	Frank A. Morfe
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Egenturo ,	The contract of the contract o
·	Eva M. Morfe.
Chy State Zpeede	Esse M. Marto
Among to Posteror. Newton A. Williams. Focusing	• •
Newton A. Williams, Esquire	2034 Tred Avon Road, 653-0626
Newton a. Williams	Baltimore, Maryland 21221
Signature St. Cy. 177 200	City State Address and phane number of lagel owner, contrast constraint or management
700 Court Towers	Newton A. Williams
210 W. Pennsylvania Avenue; 823-7800	Market A. WIIIIamo
Towson, Maryland 21204	700 Court Towers
Cay State Egende	210 W. Pennsylvania Ave. + 823-7800
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	ESTIMATED LENGTH OF HEARING THE HEARING
·•	the fellowing distres Heart Time Months

welfare of the area wolved, and fits in well with the shore front environment.

Whe do externily declare and affirm, under the ponelties of perjury, that thee are the legal emerge) of the property which is the subject of the Poster.

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Telephone: (410) 665-3242 Telecopier (410) 665 3659

7902 Belair Road Baltimore, Md. 21236

December 2, 1993

SONING DESCRIPTION FOR 2034 TRED AVON ROAD

Election District: 13th Councilmanic District: 5th

Beginning for a point on the northwest side of Tred Avon Road which is 30 wide at a distance of 36 feet, more or less, to the centerline of the nearest improved intersecting street know as Antietam Road which is 30 feet wide. Being all of Lot 53 and a part of Lot 52 in the subdivision of Middleborough on Middle River as recorded in Baltimore County Plat Book 4, folio 191 and containing 15,554 square feet; 0.357 acres.



Baltimore County Government Office of Zoning Administration and Development Management



411 West Chesapeake Avenue

Towson, MD 2120+

(410) 887-3353

Tanuary 27, 1994

Newton A. Williams, Esquire Nolan, Plumhoff & Williams, Chartered 700 Court Towers 210 West Pennsylvania Avenue Towson, Maryland 21204

RE: Case No. 94-259-A, Item No. 262 Petitioner: Frank A. Morfe, et ux Petition for Variance

Dear Mr. Williams:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on December 30, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1. The director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.

CERTIFICATE OF POSTING AING DEPARTMENT OF BALTIMORE COUNTY (7) - 157-14

Maria Maria Location of property: 1924 Tress Aven 1 Nuls Location of Signer Library 100 May 100 property bring tooms Date of return: 1/1/21

The Zoning Commissioner of 3altimore County, by authority of the Zoning Act and Regu-ations of Battmore County with 10ld a public hearing on the property identified herein in Room 108 of the County Office Building boated at 11 Me Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as kolows. Case Number: 94-259-A (Nem 262) 2034 Tred Avon NW/S Tred Avon, 36' SW of c/l Antietam Road SW of C/I Arestam Hoad

13th Election District

5th Councilmanic

Petitioner(s):
Fred A. Morle
and Eva M. Morle

HEARING: FRIDAY,
FEBRUARY 4, 1994 at

11:00 a.m. in Rm. 106, O/I
free Building. fice Building. Variance: to temporarily permit a 2.2 foot front yard setback in lieu of the required 25 feet; and to temporarily permit a 1.4 foot side yard setback in lieu of

tion concerning the File and/or Hearing, Please Call 887-3391.

CERTIFICATE OF PUBLICATION

TOWSON, MD., THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of / successive weeks, the first publication appearing on

Maryland Department of Transportation State Highway Administration

O. James Lighthizer Hal Kassoff Administrator

1-4 94

Item No.: (1 36 2 (CAY1))

Ms. Charlotte Minton Zoning Administration and Development Management County Office Building Room 109 111 W. Chesapeake Avenue Towson, Maryland 21204

Re: Baltimore County

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours, Bal Smell DAYID N PARTURY HOTING CHIEF Lew John Contestabile, Chief Engineering Access Permits Division

My telephone number is _____ Maryland Relay Service for Impaired Hearing or Speech 1-800-735-2258 Statewide Toll Free Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 BALTIMORE COUNTY, MARYLAND

CRITICAL

Please Make Checks Payable To: Baltimore County

Account: R-001-6150

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Carlotte (17 April 1989)

Zoning Administration to Development Management 111 Sest Chesapeake Ascaue

FRANKAENA MINTE - 20 4 moddanie

on, Maryland 21204

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director Zoning Administration and Development Management

DATE: January 20, 1994

FROM: Pat Keller, Deputy Director Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s): Item No. 262, 264, 265, 266, 267, 268, 270, 273, 274, 275 and 276.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

ZAC.262/PZONE/ZAC1

Baltimore County Government Office of Zoning Administration and Development Management



111 West Chesapeake Avenue Towson, MD 21204

JANUARY 10, 1994

(410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Townson, Maryland 21254

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-259-A (1tem 262) 2034 Tred Avon NW/S Tred Avon, 36' SW of c/1 Antietam Road 13th Election District - 5th Councilmanic

Petitioner(s): Fred A. Morfe and Eva M. Morfe HEARING: FRIDAY, FEBRUARY 4, 1994 at 11:00 a.m., Rm. 106, Office Building.

Variance to temprarily permit a 2.2 foot front yard methack in lieu of the required 25 feet; and t temporarily permit a 1.4 foot side yard setback in lieu of the required 10 feet.

cc: Frank and Eva Morfe Newton A. Williams, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEAPING DATE. (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353. (3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3331.

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Baltimore County Government



700 Fast Joppa Road, Suite 901 Towson, MD 21286 5500

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(410) 887-3353

January 31, 1994

Newton A. Williams, Esquire Nolan, Plumhoff & Williams, Chartered Suite 700, 200 Court Towers 210 West Pennsylvania Avenue Towson, Maryland 21204

RE: Case No. 94-259-A, Item No.262 2034 Tred Avon Road Petition for Variance

Dear Mr. Williams:

Enclosed are copies of comments received from the Department of Environmental Protection and Resource Management on January 31, 1994 for the above-referenced case.

If there are any questions, please do not hesitate to call me at

Sincerely,

Childelle Minton Charlotte Minton

Fnclosure

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PETITION FOR VARIANCE BEFORE THE

2034 Tred Avon Road ZONING COMMISSIONER

PETITIONER: FRANK A. MORFE, et ux

ENTRY OF APPEARANCE

: : : : :

Please enter the appearance of the People's Counsel in the above captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

People's Counsel for Baltimore County

Carole S. Demilio Deputy People's Counsel Room 47, Courthouse 400 Washington Avenue Towson, Maryland 21204 (410) 887-2188

I HEREBY CERTIFY THAT on this 38 day of Johnson, 1994, a copy of the foregoing Entry of Appearance was mailed to Newton A. Williams, Esq., 700 Court Towers, 210 W.Pennsylvania Avenue, Towson, MD 21204.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENTE BELVEN INTER-OFFICE CORRESPONDENCE

Mr. Arnold E. Jablon Zoning Administration and

Petition for Variance (Zoning Item 262)

FEB - 7 1994 DATE: January 27, 1930NING COMMISSIONER

JAN 31 1994

The subject property is located at 2034 Tred Avon Road on Hopkins Creek. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Mr. and Mrs. Frank Morfe

Development Management

Mr. J. James Dieter

SUBJECT: Frank and Eva Morfe Property

APPLICANT PROPOSAL

SOEIVED FOR FILIN

WITCHAM P. CHOLEHADT, MIL

TELECOPIER TELEPHONE NUMBER

STEPHEN J. NOLAN:

ROBERT L. MARILEY, JO.

RODENT S. GLUSHAROW

STEPPEN M. SCHENNING

POUSLAS L BURGESS

CHOSE OF GUIDAN, ED

*HUND COMMITTED IN D. C.

1 3969

HOSERF C. CAHPE, JR

SITE LOCATION

The applicant has requested a variance from BCZR 1B02.3.C.1 to temporarily permit a 2.2 foot front yard setback in lieu of the required 25 feet and from BCZR 1802.3.C1 to permit a 1.4 foot side yard setback in lieu of the required 10 feet. A temporary "zoning use division line" is also proposed which would serve to subdivide the 0.36 acre site into two lots to allow the continued existing use of two S.F.D. dwellings on one lot for a period of 10 years from approval date of the subsequent zoning order. This variance is being requested to correct a zoning violation which has been occurring <1986.

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands:

JIXCC Mr Ken M 1 - Phones 655 - 12 12 71X 665- 3659

NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

Softe 200, Court Towner

210 WEST PENNSYLVANIA AVENUE

TOWSON, MARTLAND PIZO4-5340

(410) 823-7800

TELEFAR: (410) 296-7765

TELECOPY_COVER_PAGE

TELEFAX (410) 296-2765

January 18,1994 CLIENT/MATTER NO. 3849/01

2 A Delle I goding Communication Office

HE NUMBER TO CONFIRM RECEIPT: 881-359

IF FOR ANY REASON YOU NEED TO CONTACT US. PLEASE CALL

Wear Carl, Kate and Kinert

Muller OF PAGES (INCLUDING COVER SHEET)

Morfe, 94 259 A (Stem 262), I Bruary 4th, 1/A/M

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. Conserve fish, wildlife and plant habitat; and

Mr. Arnold E. Jablon January 27, 1994

> Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts" <COMAR 14.15.10.01.0>.

REGULATIONS AND FINDINGS

Regulation: "The sum of all man-made impervious areas shall not exceed 15% of the lot, parcel or property proposed to be developed, except that lots less than or equal to one acre each, and located in a subdivision approved after June 1, 1986 may contain impervious areas up to 25% of the lot" <Baltimore County Code, Section 26-453(e)>.

Finding: The property is completely built out and currently contains 5,150 square feet of impervious surface (ie. 33% of lot). No additional impervious surface is proposed in the variance request; therefore, no mitigation for the excess impervious surface will be required at this point in time. However, if for whatever reason the property is sold or the temporary zoning use division line is allowed to exist beyond ten years, the property must be brought into compliance with this regulation.

Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code Section 26-449(a)>.

Finding: The existing house on lot 1 is predominantly within the 100 foot buffer. If the temporary zoning division line is allowed to continue beyond ten years, mitigation for this buffer impact shall be provided. No additional construction shall occur in the buffer at any

Regulation: "If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15%" <COMAR 14.15.02.04 C.(5)(e)>.

Finding: The property does not currently contain 15% tree coverage. If any development occurs on the property, the site must be brought into compliance by planting 6 trees and 12 shrubs in the 100 foot shoreline buffer

Mr. Arnold E. Jablon January 27, 1994

CONCLUSION

Because the subject variance request is sought to correct an existing zoning violation and no development is proposed this Department will not, at this time, impose the above-mentioned regulations. However, no future development shall be permitted and no extension of the "temporary zoning division line" shall be granted until the property is brought into compliance with these regulations and any other applicable environmental regulations in effect at that point in time.

> J. James Dieter, Director Department of Environmental Protection and Resource Management

JJD/GES/tmm

MORFE/DEPRM/WOCBCA

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PETITIONER(S) SIGN-IN SHEET 700 Court Toures. 21204 1003 HART KOND 21286 20.34 TRED AVON ROAD 21221

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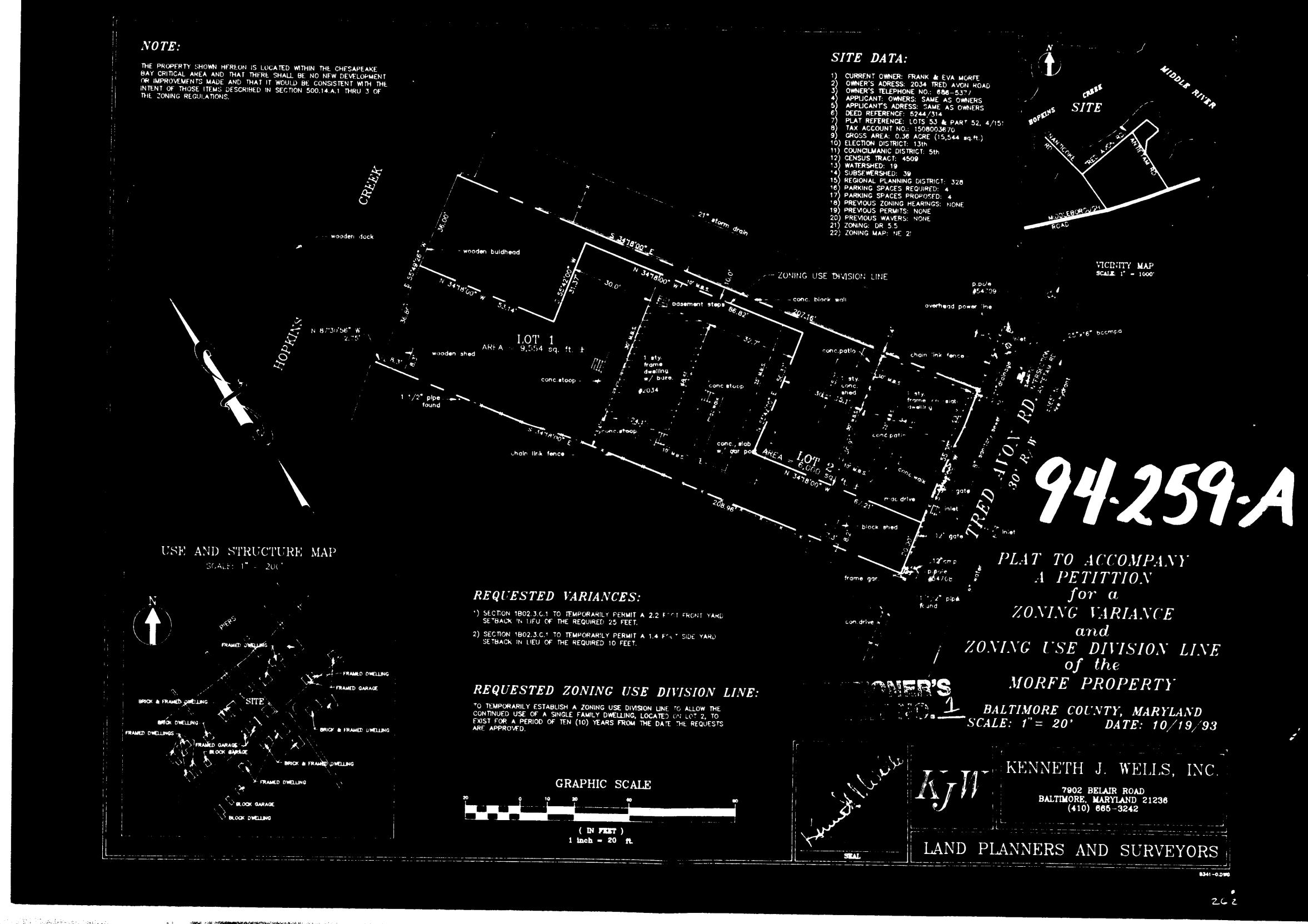
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Case 94-259-A

